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Nos. 91-90, 91-161 and 91-264

In the Supreme Court of the United States

OCTOBER TERM, 1991

RONALD MEYER AND LEON MILLER A/K/A LEE MILLER, PETITIONERS

v.

UNITED STATES OF AMERICA

FRED WILMOT, PETITIONER

v.

UNITED STATES OF AMERICA

THOMAS A. WILLIAMS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

KENNETH W. STARR
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217

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Petitioners contend that the court of appeals erred in reversing an order dismissing portions of three counts of a multi-count indictment on the ground

that the conduct charged, if proved, would not violate the Bank Secrecy Act of 1970, 31 U.S.C. 5313(a).

1. On November 8, 1989, petitioner Wilmot, a bank officer, and petitioners Meyer, Miller, and Williams, bank customers, were indicted by a grand jury sitting in the United States District Court for the Eastern District Missouri. They were charged in three counts of a superseding indictment with conspiracy to violate the Bank Secrecy Act of 1970 and to defraud the United States, in violation of 18 U.S.C. 371; causing the Farm & Home Savings Association to fail to file Currency Transaction Reports (CTRs), in violation of 31 U.S.C. 5313 and 5322; and concealing material facts that would have been disclosed to the Internal Revenue Service had CTRs been filed, in violation of 18 U.S.C. 1001.[1] Among other things, the indictment alleged that the customer petitioners purchased multiple money orders totaling more than $10,000, but less than $10,000 each, from three branches of Farm & Home on September 26, 1989, "with the knowledge, acquiescence and counsel" of a bank officer.

On June 27, 1990, the district court dismissed the three counts against petitioner Wilmot on the ground that the indictment did not allege that he had engaged in the deliberate structuring of the transactions to avoid the CTR reporting requirement. The district court also dismissed the charge that petitioners Meyer, Miller, and Williams violated 18 U.S.C. 1001 on the ground that they had no duty to disclose their structured transactions to Farm & Home Saving. The court held that the bank had no duty to file CTRs because the bank cus-

[1] Petitioner Wilmot was also charged, in a count not here relevant, with giving false testimony before the grand jury.

tomers rather than the bank officer structured the transaction. 91-90 Pet. App. A13-A20.

The court of appeals reversed. 91-90 Pet. App. A1-A11. The court held that since the indictment alleges knowledge and participation by a responsible bank employee, it is immaterial to the bank's duty to report that the money order purchases were physically handled by the customers at various branches. In the court's view, these allegations, if proved, would establish that the bank knew that one or more transactions in excess of $10,000 per day were being structured in an attempt to evade Farm & Home's reporting requirements under the Act.

2. Petitioners Meyer, Miller, and Williams contend (91-90 Pet. 5-6; 91-264 Pet. 10-17, 22-25) they were not given fair notice of the reporting requirements, and that the prosecution is an ex post facto application of the statute. Petitioner Wilmot contends (91-161 Pet. 8-13) that his prosecution violates due process because neither the statute nor the regulations require a bank official to file a CTR where no single transaction exceeds $10,000. Petitioners also contend (91-90 Pet. 6; 91-161 Pet. 14-16; 91-264 Pet. 18-21) that the court of appeals' decision conflicts with decisions of other circuits. Whatever the merits of petitioners' contentions, they are not presently ripe for review by this Court. The court of appeals' decision places petitioners in precisely the same position they would have occupied if the district court had denied their motion to dismiss. If petitioners are acquitted following a trial on the merits, their contentions will be moot. If, on the other hand, petitioners are convicted and their convictions are affirmed on appeal, they will then be able to present their contentions to this Court, together with any other claims they may have, in a petition for a writ of cer-

tiorari seeking review of the final judgment against them. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.[2]

It is therefore respectfully submitted that the petitions for a writ of certiorari should be denied.

KENNETH W. STARR
Solicitor General

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[2] Because this case is interlocutory, we are not responding on the merits to the questions presented by the petitions. We will file a response on the merits if the Court requests.